

SENATE BILL 1572

By Herron

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 7; Title 10, Chapter 7, Part 5 and Title 65,
relative to broadband deployment across the state
of Tennessee.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by inserting sections 2 through 12 below as a new, appropriately designated chapter thereto.

SECTION 2.

(a) There is created a nonprofit corporation, which shall be known as the Tennessee broadband access corporation.

(b) The corporation shall be registered with the secretary of state and shall be subject to the corporate laws of the state of Tennessee.

(c) The corporation shall be a body, politic and corporate, and a quasi-public instrumentality, and not a state agency or department, which shall be deemed to be acting in all respects for the benefit of the people of the state through the facilitation of the deployment of broadband access in the state of Tennessee and in the performance of other essential public functions entrusted to it.

(d) The corporation shall have perpetual succession and shall adopt, amend, and repeal bylaws and regulations for the conduct of its affairs.

(e) The corporation shall strive to facilitate the deployment of broadband access to every home and business in the state of Tennessee.

(f) Venue for the corporation is Davidson County, Tennessee.

(g) The corporation shall apply for the designations necessary for it to receive favorable state and federal tax treatment due to its nonprofit status.

SECTION 3.

(a) The corporation shall be governed by a board of directors composed of seven (7) directors.

(b) The directors shall be residents of the state of Tennessee, shall have expertise in their businesses or professions, and shall be appointed by the governor. All appointments shall be filed with the secretary of state within five (5) working days of appointment.

(c)

(1) No person shall serve as a director of the corporation who has been convicted of:

(A) Any felony;

(B) A misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor; or

(C) Any offense in a federal court, military court, or court of another state, territory or jurisdiction that under the laws of this state would disqualify such person pursuant to subdivisions (c)(1)(A) or (B).

(2) Prior to the appointment of a person as a director, the governor shall submit the names of potential directors to the Tennessee bureau of investigation. The Tennessee bureau of investigation, pursuant to § 38-6-109, shall conduct a criminal history records check on all such persons. The Tennessee bureau of investigation may contract with the federal bureau of investigation, another law enforcement agency or any other legally authorized entity to assist in such investigation. Such persons shall supply a fingerprint sample on request and in the manner requested by the investigating entity. The Tennessee bureau of investigation shall conduct such investigation as soon as practicable after

submission of names by the governor. The corporation shall pay, as an operating expense, the cost of the records check. The results of such a records check shall not be considered a record open to the public pursuant to title 10, chapter 7, part 5.

(d) In making the appointments pursuant to subsection (b), the governor shall strive to ensure that the board is composed of directors who are diverse in professional or educational background, ethnicity, race, gender, geographic residency, heritage, perspective and experience. Members of the general assembly may be appointed to serve as directors in the discretion of the governor.

(e)

(1) Directors shall serve terms of five (5) years; provided, however, that of the initial directors appointed:

(A) Two (2) directors shall be appointed for an initial term of one (1) year;

(B) Three (3) directors shall be appointed for an initial term of three (3) years; and

(C) Two (2) directors shall be appointed for an initial term of five (5) years.

(2) After the initial terms, directors shall be appointed to serve five-year terms.

(f) All appointments of the directors shall be confirmed by joint resolution adopted by each house of the general assembly prior to the commencement of the term of office to which such director is appointed. If the general assembly is not in session when initial appointments are made, all initial appointees shall serve the terms prescribed pursuant to subsection (e), unless such appointments are not confirmed

within thirty (30) days after the general assembly next convenes following such appointments. Any vacancy on the board shall be filled by the governor to serve the unexpired term and such appointment shall be confirmed in the same manner as the original appointment. However, if the general assembly is not in session and a vacancy occurs, the governor shall fill the vacancy by appointment and the appointee to such vacancy shall serve the unexpired term unless the appointment is not confirmed within thirty (30) days after the general assembly next convenes following the appointment to fill the vacancy.

(g) The term of office of each director shall commence on July 1 following such director's appointment; provided, however, that the term of office for each initial director shall commence on the date of appointment but shall be calculated, for purposes of the term, from July 1, 2007. If not reappointed, a director shall cease to hold office at the end of the director's term. All initial appointments of directors shall be made on or before July 1, 2007.

(h) A director of the board, or any member of their immediate family, shall not have a direct or indirect interest at the time of their appointment, or within a period of two (2) years prior to their appointment, in any undertaking that puts their personal interest in conflict with that of the corporation.

(i) The directors shall elect from their membership a chair and vice chair. The directors shall also elect a secretary and treasurer who may, from time-to-time, serve as the acting chief executive officer of the corporation. Such officers shall serve for such terms as shall be prescribed by the bylaws of the corporation or until their respective successors are elected and qualified. No director of the board shall hold more than one (1) office of the corporation, except that the same director may serve as secretary and treasurer.

(j) The board of directors may delegate to one (1) or more of its members, to the chief executive officer, or to any agent or employee of the corporation such powers and duties as it may deem proper.

(k) A majority of the directors in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the corporation.

(l) Action may be taken and motions and resolutions adopted by the board at any board meeting by the affirmative vote of a majority of present and voting directors.

(m) No vacancy in the membership of the board shall impair the right of the directors to exercise all the powers and perform all the duties of the board.

(n)

(1) Upon approval by the chair, directors of the board shall be reimbursed for actual and reasonable expenses incurred or a per diem not to exceed the per diem provided to members of the general assembly pursuant to § 3-1-106 for each day's service spent in the performance of the duties of the corporation or both.

(2) Directors shall not receive a salary for their duties.

(o)

(1) The governor may remove a director for neglect of duty or misconduct in office.

(2) If the governor seeks removal of a director pursuant to the provisions of this subsection (o), the governor shall deliver to the director a copy of the charges levied against such director together with a notice of hearing affording such director an opportunity to be heard in person or by counsel to defend

publicly against such charges prior to removal. The notice of hearing shall be served upon the director no later than ten (10) days prior to the hearing date.

(3) If the director is removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against the director and the governor's findings regarding the charges, together with a complete record of the proceedings.

(4) If a director is removed, the vacancy shall be filled in the same manner as other vacancies on the board.

(p) No director shall make a contribution to the campaign of a candidate for the general assembly or to a candidate for governor.

SECTION 4.

(a) The board of directors shall appoint and shall provide for the compensation of a chief executive officer who shall be an employee of the corporation and who shall direct the day-to-day operations and management of the corporation. The chief executive officer shall be vested with such powers and duties as specified by the board and by law. The chief executive officer shall serve at the pleasure of the board.

(b) The board of directors shall provide the chief executive officer with private sector, educational, municipal government and other perspectives pertaining to statewide broadband deployment.

(c) The board of directors shall:

(1) Approve, disapprove, amend, or modify the budget recommended by the chief executive officer for the operation of the corporation;

(2) Approve, disapprove, amend, or modify the terms of contracts recommended by the chief executive officer, including agreements with private

partners, educational facilities or government entities to facilitate broadband deployment; and

(3) Perform such other functions as specified by this chapter.

SECTION 5.

(a) The corporation shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of this chapter that are not in conflict with the constitution of the state of Tennessee and that are generally exercised by corporations engaged in nonprofit pursuits, including, but not limited to, the following powers:

(1) To sue and be sued as provided in this chapter;

(2) To adopt and alter a seal;

(3) To adopt, amend, and repeal bylaws, regulations, and policies and procedures for the regulation of its affairs and the conduct of its business; to elect and prescribe the duties of officers and employees of the corporation; and to perform such other matters as the corporation may determine. In the adoption of bylaws, regulations, policies, and procedures or in the exercise of any regulatory power, the corporation shall be exempt from the requirements of the Tennessee Uniform Administrative Procedures Act, compiled in chapter 5 of this title;

(4) To procure or to provide insurance;

(5) To hold copyrights, trademarks, and service marks and enforce its rights with respect to the copyrights and marks;

(6) To enter into written agreements with one (1) or more governmental entities, private entities or educational entities for the operation, participation in marketing, and promotion of broadband deployment efforts;

(7) To conduct such market research as is necessary or appropriate, which may include an analysis of the prevalence of broadband availability in the state at present;

(8) To acquire or lease real property and make improvements to that real property and acquire by lease or by purchase tangible personal property and intangible personal property;

(9) To enter into contracts to incur debt in its own name and enter into financing agreements with the state, agencies or instrumentalities of the state, or with any commercial bank or credit provider; provided, however, that any such debt must be approved by the state funding board;

(10) To appoint and select officers, agents, and employees, including professional and administrative staff and personnel, and to fix their compensation, pay their expenses, and provide a benefit program, including, but not limited to, a retirement plan and a group insurance plan; provided, however, that the corporation may become a participating employer in the Tennessee consolidated retirement system pursuant to § 4-51-131 and may be eligible as a quasi-governmental organization for state group health insurance pursuant to § 8-27-207;

(11) To select and contract with vendors;

(12) To enter into contracts or agreements with the Tennessee bureau of investigation, local law enforcement agencies, appropriate federal agencies or private companies for the performance of criminal record checks, background investigations, and security checks;

(13) To enter into contracts of any and all types on such terms and conditions as the corporation may determine;

(14) To establish and maintain banking and other financial relationships, including, but not limited to, establishment of checking and savings accounts and lines of credit; and

(15) To advertise and promote the purposes of the corporation.

(b) The provisions of title 67, chapter 4, parts 7, 20, and 21 shall not apply to the activities of the corporation.

(c) The powers enumerated in subsection (a) are cumulative of and in addition to those powers enumerated elsewhere in this chapter, and do not limit or restrict any other powers of the corporation.

SECTION 6.

(a) The chief executive officer of the corporation shall direct and supervise all administrative and technical activities in accordance with the provisions of this chapter and with the regulations, policies, and procedures adopted by the board. It shall be the duty of the chief executive officer to:

(1) Facilitate the deployment of broadband access throughout the state;

(2) Employ and direct such personnel as deemed necessary;

(3) Employ by contract and compensate such persons and firms as deemed necessary;

(4) Promote and advertise or provide for the promotion and advertisement of any functions related to the corporation;

(5) Prepare a budget for the approval of the board; and

(6) Perform other duties generally associated with a chief executive officer of a nonprofit corporation.

(b) The chief executive officer may for good cause suspend, revoke, or refuse to renew any contract entered into in accordance with the provisions of this chapter or the regulations, policies, and procedures of the board.

(c)

(1) No person shall serve as chief executive officer of the corporation who has been convicted of:

(A) Any felony;

(B) A misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor;

(C) Any violation of this chapter; or

(D) Any offense in a federal court, military court or court of another state, territory or jurisdiction that under the laws of this state would disqualify such person pursuant to subdivisions (c)(1)(A), (c)(1)(B), or (c)(1)(C).

(2) Prior to employment of a person as the chief executive officer, the board shall submit the names of potential chief executive officers to the Tennessee bureau of investigation. The Tennessee bureau of investigation, pursuant to § 38-6-109, shall conduct a criminal history records check on all such persons. The Tennessee bureau of investigation may contract with the federal bureau of investigation, another law enforcement agency or any other legally authorized entity to assist in such investigation. Such persons shall supply a fingerprint sample on request and in the manner requested by the investigating entity. The Tennessee bureau of investigation shall conduct such investigation as soon as practicable after submission of names by the board. The corporation

shall pay, as an operating expense, the cost of the records check. The results of such a records check shall not be considered a record open to the public pursuant to title 10, chapter 7, part 5.

SECTION 7.

(a) The chair of the board of directors shall appoint a broadband stakeholder advisory board to be composed of an unlimited number of interested stakeholder representatives, including representatives of governmental agencies, private corporations and other business entities, public and private educational organizations, and other entities with an interest in the deployment of broadband access across the state. Each stakeholder entity shall have one (1) representative on the advisory board. The function of the advisory board shall be to advise the board of directors on all aspects of broadband deployment including the effect of facilitating broadband access throughout the state.

(b) The advisory board shall establish its own rules and internal operating procedures. The advisory board may report to the board of directors or to the Tennessee broadband task force in writing at any time. The board of directors may invite the advisory board to make an oral presentation to the board of directors at regular meetings of the board.

(c) As an operating expense of the corporation, members of the advisory board shall receive a per diem not to exceed the per diem provided to members of the general assembly pursuant to § 3-1-106, for each day's service spent in the performance of the duties and responsibilities of the advisory board.

SECTION 8.

(a) The corporation may enter into information sharing, intelligence sharing, reciprocal use, or restricted use agreements with the federal government, law

enforcement agencies, municipal or county governments, telecommunications providers and other utilities, and other organizations or public or private entities, which agreements may provide for and regulate the use of information provided and received pursuant to the agreement.

(b) Records, documents, and information in the possession of the corporation received pursuant to an agreement as described in subsection (a) are not public records subject to the provisions of § 10-7-503 and shall not be released under any condition without the permission of the person or agency providing the record or information.

SECTION 9.

(a) The corporation shall be eligible to be a participating employer in the Tennessee consolidated retirement system upon:

(1) Passage of a resolution by the corporation's board of directors authorizing an actuarial study; and

(2) Passage of a resolution by the corporation's board of directors authorizing such participation and accepting the liability as a result of the participation by its full-time employees.

(b) The employees of the corporation shall make the same contributions, participate in the same manner, and shall be eligible for the same benefits as employees of local governments participating in the retirement system.

(c) The employees shall be entitled to credit for prior service as approved by the board of directors of the corporation under the same provisions that apply to employees of local governments.

(d) The retirement system shall not be liable for the payment of retirement allowances or other payments on account of employees of the corporation or their

beneficiaries for which reserves have not been previously created from funds contributed by the corporation, its employees or the corporation and its employees.

(e) In case of the withdrawal of the corporation as a participating employer, the benefits of the members and beneficiaries shall be determined in accordance with the provisions of § 8-35-211.

(f) It is the legislative intent that the state shall realize no increased cost as a result of this section. All costs associated with retirement coverage, including administrative costs, shall be the responsibility of the corporation.

SECTION 10.

(a) The corporation is immune from all tort causes of action. Notwithstanding § 4-51-101(c) or any other law to the contrary, the corporation shall be considered a state agency for purposes of title 9, chapter 8, parts 3 and 4; provided, that the corporation shall not be considered a state agency for purposes of contract and workers' compensation actions. Actions for workers' compensation and contract actions, as provided in this chapter, may be brought against the corporation only in the chancery court for Davidson County.

(b) Corporation employees shall be considered state employees for purposes of §§ 8-42-103, 9-8-112 and 9-8-307; provided, that such employees shall not be considered state employees for workers' compensation coverage, pursuant to § 9-8-307(a)(1)(K).

(c) The corporation shall have the authority to participate in the department of treasury's property/casualty risk program pursuant to title 12, chapter 3, part 9, for all buildings and building contents owned by the corporation, or that the corporation is contractually obligated to insure.

(d) The corporation shall pay to the state, as a premium, any contribution required by the risk management fund under this section.

(e) It is the legislative intent that the state shall incur no additional liability as a result of this section.

SECTION 11. At the request of the corporation, the Tennessee regulatory authority is authorized and empowered to collect data from any public or private entity in this state relevant to assessing Tennesseans' access to broadband technologies and shall make that information available for the use of the corporation for any use consistent with its purposes. Such information in the possession of either the Tennessee regulatory authority or the corporation shall not be deemed to be a public record pursuant to § 10-7-503.

SECTION 12. Any agency of state government is authorized to contract with the corporation in order to facilitate the accomplishment of the objectives of the corporation, subject to approval of such contract and any funding pursuant to such contract according to the usual contracting procedures of the agency. All state departments and agencies are encouraged to assist the corporation in its efforts, including:

(1) Tracking the deployment and adoption of telecommunications and information technology in this state;

(2) Enabling public-private partnerships among telecommunications providers and relevant government entities to encourage the deployment and adoption of advanced telecommunications services;

(3) Serving as a resource for citizens and other government agencies to address concerns and questions regarding telecommunications and information technology issues; and

(4) Reporting on the progress of the goals of the corporation to the governor, the board of directors of the corporation and the Tennessee broadband task force.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, then all provisions and applications of this are declared to be invalid and void.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.